

CLIFFORD V. DUNN
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DOGM
MINERALS PROGRAM
FILE COPY

March 7, 1989

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State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
Salt Lake City, Utah

DIVISION OF
OIL, GAS & MINING

Attn: Mr. Lowell P. Braxton
D. Wayne Hedberg

Re: Review of Reclamation Plan, 5M, Incorporated,
Silver Reef Mine, M/053/002, Washington County,
Utah

Division Letters: January 23, 1989 (Braxton)
August 11, 1988 (Braxton)
December 27, 1988 (Hedberg)
February 13, 1989 (5M, Inc.)

Dear Mr. Braxton:

Pursuant to the next to the last paragraph of the letter dated February 13, 1989 from 5M, Incorporated to your office, enclosed is a copy of the Complaint against Kerley Mining Chemicals, Inc. I believe that this substantiates our actions to obtain clarification, and to obtain the bond.

Pursuant to my discussions with your office, I was informed that rather than acting on the Petition that was formally applied for earlier through my office, that the Department of Natural Resources preferred to have us pursue the matter in court.

If you have any questions, don't hesitate to call.

Sincerely,


CLIFFORD V. DUNN
Attorney at Law

CVD/vmw

cc: 5M, Inc.

CLIFFORD V. DUNN #933
Attorney for Plaintiff
P. O. Box 2318
St. George, Utah 84770
(801) 628-5405

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UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

5M, INC., a Utah)	
Corporation,)	
)	COMPLAINT
Plaintiff,)	
)	
vs.)	Civil No.: _____
)	
KERLEY MINING CHEMICALS,)	
INC., an Arizona corporation,)	
)	
Defendant.)	

COMES NOW the Plaintiff in the above-entitled lawsuit and does hereby allege against the Defendant as follows:

1. Plaintiff is a Utah corporation organized according to the laws of the State of Utah and domiciled in Hurricane, Utah. Defendant is an Arizona corporation, domiciled in Arizona with its principal place of business in Sahuarita, Arizona.

2. The amount of controversy exceeds \$10,000.

3. There is complete diversity between the parties.

Pursuant to Paragraph 21 of Exhibit "A", both parties agreed that the Federal District Court for the State of Utah would have jurisdiction of any litigation surrounding the agreements attached hereto as Exhibit "A".

4. On or about the 23rd day of August, 1984, Plaintiff, and Defendant entered into a "Mining Lease and Option to Purchase." Said Mining Lease and Option to Purchase is attached hereto as Exhibit "A", and by this reference made a part hereof. Pursuant to said Mining Lease and Option to Purchase, Defendant became liable and responsible for all reclamation requirements pursuant to the Utah Mine Land Reclamation Act, Utah Code Annotated Section 41-8-1 to 23, (see Paragraph 13 at Page 37 and 38 of Exhibit "A".) As part of this responsibility, Defendant posted a \$55,210 cash Reclamation Bond with the Division of Oil, Gas and Mining.

5. Pursuant to said agreement, (Paragraph 13 at Page 37 and 38 of Exhibit "A"), in the event the Mining Lease and Option to Purchase was terminated prior to February 1, 1985, Plaintiff was required to provide a substitute bond, and deliver the \$55,210 reclamation bond to Defendant.

6. Pursuant to Paragraphs 3 and 4 of Paragraph 6 (f) (3-4), of Exhibit "A", the Plaintiff would be responsible and liable for all reclamation obligations after the termination of the Mining Lease and Option to Purchase.

7. Thereafter, on or about the 27th day of February, 1985, an Agreement and First Amendment of Contract was entered into specifically providing for a loan arrangement of \$75,000 which facilitated the cash payment by Defendant to Plaintiff. The Agreement and First Amendment of Contract dated on or about the 27th day of February, 1985, is attached hereto as

Exhibit "B", and by this reference made a part hereof. It was the express understanding of the parties that Defendant would pay the \$75,000 loan obligation to Zion National Bank as a part of the payments towards the obligations of the agreements contained in Exhibit "A" and Exhibit "B".

8. Further, pursuant to that agreement, the parties discussed the reclamation bond vis-a-vis the termination of Defendant's interest in the mining property in question. It is the clear intent of Paragraph 4 at Page 3 of Exhibit "B" to provide an ongoing reclamation bond upon the site, and provide a means whereby Plaintiff could repay Defendant should the lease be terminated.

9. On or about the 11th day of June, 1985, an "Agreement and Second Amendment" to the Contract was entered into by and between Defendant and Plaintiff, a copy of which is attached as Exhibit "C", and by this reference made a part hereof. The reclamation bond was again discussed in Paragraph 5 at Page 6 of Exhibit "C". The clear intent of that paragraph was again to provide a means whereby the reclamation bond would stay with the property, and inure to the benefit of the Owner (Plaintiff) in the event of the termination of the lease. The only provision was that under specific circumstances, the Owner (Plaintiff) would reimburse Defendant for the monies placed as a reclamation bond.

10. On or about the 31st day of August, 1985, an "Extension Agreement" was entered into by and between

Plaintiff and Defendant, a copy of which is attached as Exhibit "D", and by this reference made a part hereof. There is no reference to the reclamation bond on the Extension Agreement, but said Exhibit "D" primarily provides for an extension of time in which Defendant could pay the obligations incurred; specifically the \$75,000 loan obligation.

11. On or about the 1st day of November, 1985, the Mining Lease and Option to Purchase, together with all amendments, attached as Exhibits "A" through "D", were terminated, and Defendant had no further rights in and to the mining property, with the exception of the possible right to reimbursement for the use of the reclamation bond.

12. Thereafter, and as later as June 12, 1986, Defendant by and through Kerley Industries, was still communicating with the Division of Natural Resources. A copy of such communication, dated June 12, 1986, is attached hereto as Exhibit "E", and by this reference made a part hereof. Such communication and dealings by and between the Division of Natural Resources and Defendant made it extremely difficult for Plaintiff to function with regard to the specific Silver Reef Mine. A copy of the responsive letter dated June 27, 1986, from the attorney for Plaintiff at that time is attached as Exhibit "F", and by this reference made a part hereof.

13. On or before the 1st day of January, 1988, the reclamation bond, pursuant to appropriate notice, was forfeited by action of the Division.

14. On or about the 25th day of March, 1988, Plaintiff proposed a reclamation plan for the Silver Reef Mine, a copy of which is attached hereto as Exhibit "G", and by this reference made a part hereof.

15. Plaintiff has proceeded to implement the reclamation plan as is evidenced by a letter from the Division of April 7, 1988, a copy of which is attached hereto as Exhibit "H", and by this reference made a part hereof.

16. Plaintiff desires to petition the Board of Oil, Gas and Mining of the Department of Natural Resources of the State of Utah for the use of the bond previously forfeited by Defendant.

17. It is impossible to complete said petition without an order of the court determining the legal rights to said bond. It is the Plaintiff's claim that all proceeds of the bond, and all rights, title and interest in and to the bond previously held by the Defendant are and should be hereafter deemed to be the sole property of Plaintiff.

WHEREFORE, Plaintiff prays judgment against Defendant determining that all right, title, and interest that Defendant may have had in the bond previously forfeited as described herein in the sum of \$55,210 is hereby and shall be forever the sole and absolute property of Plaintiff.

Further, for an order of the court pursuant to Paragraph 21 of Exhibit "A" to Plaintiff's Complaint be responsible for all attorney's fees and costs of this action.

DATED this ____ day of _____, 1989.

CLIFFORD V. DUNN
Attorney for Plaintiff

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